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ORDINANCE _____

AN ORDINANCE relating to the City Light Department; authorizing the execution of a confirmation agreement with J.P. Morgan Ventures Energy Corporation for the purchase of environmental attributes from a 10 MW share of the Stateline Wind Project in the form of renewable energy certificates that are necessary or convenient for meeting the requirements of the Washington State Energy Independence Act; and further authorizing the execution of other necessary and convenient agreements for the receipt, tracking, transferring, management, and sale of the environmental attributes.

WHEREAS, the Revised Code of Washington ("RCW") Chapter 19.285 (the "Washington State Energy Independence Act") requires the City Light Department ("City Light") to acquire renewable resources and/or environmental attributes; and

WHEREAS, J.P. Morgan Ventures Energy Corporation has the marketing rights to the environmental attributes of a share of the Stateline Wind Project; and

WHEREAS, the Stateline Wind Project's environmental attributes meet the requirements of RCW Chapter 19.285; and

WHEREAS, J.P. Morgan Ventures Energy Corporation wishes to sell and City Light wishes to purchase such environmental attributes created by the Stateline Wind Project; and

WHEREAS, J.P. Morgan Ventures Energy Corporation has executed a Master Renewable Energy Certification Purchase and Sale Agreement; and

WHEREAS, Ordinance 123499 authorized City Light's use of a Master Renewable Energy Certificate Purchase and Sale Agreement; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. The Superintendent of the City Light Department ("City Light"), or his designee, is hereby authorized to execute for and on behalf of the City, a transaction-specific 5-year Confirmation Agreement, substantially in the form attached hereto as Exhibit A. The agreement with J.P. Morgan Ventures Energy Corporation set forth the terms under which J.P.

1 Morgan Ventures Energy Corporation will deliver environmental attributes in the form of
2 renewable energy certificates ("RECs") to City Light.

3 Section 2. The Superintendent of City Light, or his designee, is hereby further authorized
4 to execute for and on behalf of the City additional agreements necessary for use of the Western
5 Renewable Energy Generation Information System or any other system for tracking and
6 transferring the RECs to City Light and other necessary and convenient agreements to enable
7 City Light to use the RECs purchased hereunder to meet its regulatory requirements.

8 Section 3. Upon determining the availability of surplus environmental attributes within
9 City Light's portfolio, and in order to minimize the cost to City Light's customers of compliance
10 with the Washington State Energy Independence Act when the Superintendent believes it is cost-
11 effective to acquire RECs in advance of need, the Superintendent, or his designee, is further
12 authorized to execute for and on behalf of the City agreements for the sale of all or a portion of
13 the environmental attributes purchased under the Renewable Energy Certificate Purchase and
14 Sale Agreement with J.P. Morgan Ventures Energy Corporation, on terms and conditions that the
15 Superintendent deems in the best interests of City Light provided, however, that no such sale
16 shall jeopardize City Light's compliance with the Washington State Energy Independence Act.

Section 4. This ordinance shall take effect and be in force 30 days after its approval by the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it shall take effect as provided by Seattle Municipal Code Section 1.04.020.

Passed by the City Council the ____ day of ____, 2011, and signed by me in open session in authentication of its passage this ____ day of ____, 2011.

President ____ of the City Council

Approved by me this ____ day of ____, 2011.

Michael McGinn, Mayor

Filed by me this ____ day of ____, 2011.

Monica Martinez Simmons, City Clerk

(Seal)

Exhibit A: Confirmation Agreement - Renewable Energy Certificates from 10 MW of the Stateline Wind Project

EXHIBIT A

CONFIRMATION AGREEMENT RENEWABLE ENERGY CERTIFICATES from 10 MW of STATELINE WIND PROJECT

This Confirmation Agreement ("**Confirmation**") dated as of _____ ("**Trade Date**") is entered into by and between J.P. Morgan Ventures Energy Corporation ("**Seller**") and The City of Seattle, a Washington municipal corporation, by and through its City Light Department ("**Buyer**"), each referred to herein individually as a "**Party**" and collectively as the "**Parties**".

The following describes a Transaction between Buyer and Seller for the sale, purchase and delivery of Product pursuant to the terms of the Master Renewable Energy Certificate Purchase and Sale Agreement between them dated October 11, 2011 ("**Master Agreement**"). The Master Agreement and this Confirmation, including the Special Terms & Exceptions described in Section 8 below, shall be collectively referred to herein as the "**Agreement**".

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1. **Product:** Renewable Energy Certificates ("**RECs**") that include all Environmental Attributes arising as a result of the generation of electricity associated with the REC. The REC is generated from the Unit Specific Renewable Energy Facility that, as of the Trade Date, meets the requirements of the Renewable Portfolio Standard ("**RPS**") of Washington State, the definition of a Renewable Resource under Revised Code of Washington ("**RCW**") 19.285.030 (18) and is eligible for certification under Section II of the Green-e Energy National Standard for Renewable Electricity Products, National Standard Version 2.0. Such Product is created by a facility that meets the requirements of a Certified Renewable Energy Facility. Buyer shall have the right to disaggregate, retain or separately sell the RECs or Environmental Attributes purchased under this Agreement.
 2. **Term:** The Term of this Transaction shall commence on January 1, 2022 and shall continue through December 31, 2026 and until all obligations of the Parties under this Agreement have been satisfied, unless an Early Termination Date of this Agreement is established pursuant to Section 5.2 of the Master Agreement. This Confirmation Agreement is conditional upon and shall not take effect or be enforceable against either Party until all of the following have occurred:
 - a. The Confirmation Agreement has been executed by a properly authorized representative of J.P. Morgan Ventures Energy Corporation; and
 - b. The Confirmation Agreement has been executed by a properly authorized representative of the City of Seattle.

3. Unit Specific Certified Renewable Energy Facility Information:

- a. Name of Facility: Stateline Wind Project
- b. Location of Facility: Walla Walla County, Washington and Umatilla County, Oregon
- c. Facility ID Number: _____ ☐ EIA or ☐ QF? (check one)
- d. Fuel Type: wind energy
- e. Initial Operating Date: December 2001
- f. Nameplate Capacity (MW): 176.9 MW and 122.8 MW = 299.64 MW

4. Contract Quantity: 100% of the Environmental Attributes generated by 10 MW of installed capacity at the Renewable Energy Facility during the Term.

- a. Estimated Capacity Factor: 27%
- b. Guaranteed 3-Contiguous Years Minimum RECs calculated as follows: 21.6% multiplied by 10 multiplied by the total number of hours in the 3 year period. Details of this calculation are shown in Attachment 2. Based on 10 MW of installed capacity, the estimated number of guaranteed RECs over a 3-year contiguous period is 56,765 RECs.

In the event that the Renewable Energy Facility substation transformer fails such that a replacement is necessary, the number of hours in the calculation above will be reduced by the number of hours the transformer is not working.

5. Purchase Price: \$14.00 per REC

6. WREGIS Generator Information:

- a. Generating Unit Identification Numbers:
- b. Generating Unit Names:
- c. Primary Facility Names:
- d. Facility Owner Name:

A completed Generator Attestation in the form of Attachment 1 to this Confirmation will be provided as soon as reasonably practicable.

- 7. Delivery Date:** By WREGIS REC electronic tracking and transfer system. Seller shall comply with all laws, including, without limitation, the WREGIS Operating Rules, regarding the certification and transfer of such WREGIS Certificates to Buyer and Buyer shall be given sole title to all such WREGIS Certificates. Within 10 Business Days after receipt by Seller of RECs from WREGIS, Seller shall deliver such RECs to Buyer's WREGIS account _____. After such delivery of RECs to Buyer's

WREGIS account, Seller shall invoice Buyer for such RECs in accordance with Section 2.3 of the Master Agreement.

8. Special Terms & Exceptions:

8.1 Miscellaneous.

Where the terms of this Confirmation conflict with the Master Agreement, the Confirmation shall control.

The Parties are subject to all WREGIS Operating Rules dated June 4, 2007, as may be amended, supplemented or replaced (in whole or in part) from time to time.

Verification may be requested by Buyer. If Buyer makes such a request for, or the Certification Authority requires documentation from Buyer that is in the possession of Seller or that Seller may readily attain, Seller shall use reasonable efforts to help Buyer comply with the documentation requirements of the Certification Authority.

8.2 Guaranteed 3-Year Minimum Volume.

- a. Beginning in the fourth Contract Year and continuing every year thereafter through the Term, within 30 days following the Delivery of the WREGIS Certificates from the prior December, Buyer shall calculate the number of RECs Delivered to the Buyer by Seller through WREGIS for each of the three prior Contract Years.
- b. If the amount of RECs Delivered in the three prior Contract Years is less than the Guaranteed 3-Year Minimum Volume, Buyer shall immediately provide written Notice of Deficiency to Seller showing Buyer's computation of the number of Replacement RECs due to Buyer from Seller. Seller shall have 7 days to verify Buyer's calculation. No later than 30 days following receipt by Seller of Notice of Deficiency, Seller shall provide Replacement RECs to Buyer. The vintage of the Replacement RECs must be no older than the Contract Year immediately preceding the current Contract Year. If the Seller is unable to provide Replacement RECs to the Buyer, then Seller will pay Buyer an amount equal to the positive difference, if any, between the administrative penalty pursuant to RCW 19.285.060 (or any successor statute) minus the Purchase Price; or, if Buyer is able to obtain the Replacement RECs at a cost that is less than the applicable administrative penalty, Seller will reimburse Buyer for the positive difference, if any, between cost of such Replacement RECs minus the Purchase Price.
- c. Buyer will use the Excel spreadsheet shown as Attachment 2 to determine the Guaranteed 3-Year Minimum Volume.



8.3 Change to Article 1 of the Master Agreement – "Definitions"

- a. **Section 1.23 "Downgrade Event"** is replaced as follows:

"Downgrade Event" means for a Party that such Party's Credit Rating, or the Credit Rating of its Guarantor falls below BBB from S&P or Baa2 from Moody's or becomes no longer rated by either S&P or Moody's, or as otherwise agreed by the Parties as set forth in the Confirmation.

- b. **Section 1.41 "Performance Assurance"** shall be deleted.

- c. **Section 1.55a "Secured Party"** is added as follows:

"Secured Party" shall have the meaning set forth in Section 4.2 (h).

8.4 Changes to Article 2 of the Master Agreement – "Transactions, Payment, Taxes and Transfer of Title"

- a. **Section 2.6, "Taxes and Fees"** is amended and restated in its entirety as follows:

Seller will be responsible for any Taxes imposed on the creation, ownership, or transfer of Product under this Master Agreement up to, and including, the Delivery. Buyer will be responsible for any Taxes imposed on the receipt or ownership of Product after Delivery. Each Party will be responsible for the payment of any fees, including attorney and brokers' fees, incurred by it in connection with any Transactions hereunder, unless otherwise agreed by the Parties in the Confirmation.

- b. **Section 2.7, "Transfer of Title"** is amended and restated in its entirety as follows:

None of Seller's property interest in the Product will pass to Buyer until the Delivery and payment set forth in this Article 2 are complete. Upon such completion, all rights, title and interest in and to the Product, to the full extent the same is property, will transfer to Buyer. Subject to any terms agreed by the Parties and set forth in the Confirmation, to the extent that any Transaction is for Product not yet generated on the Trade Date of the Transaction, Seller agrees to make and Buyer agrees to accept actual Delivery of the Product as specified in the Confirmation for such Transaction. This Transaction shall not be netted with other purchases and sales between the Parties.



8.5 Change to Article 3 of the Master Agreement – “Representations and Warranties”

a. **Section 3.2(d)** is revised to add the following words after the word “Confirmation”: “(except with regard to compliance with the Applicable Program, for which Seller makes no representation other than on the Trade Date as set forth above in this Section 3.2 and as described in Article 7)”.

8.6 Change to Article 4 of the Master Agreement – “Credit”

a. **Section 4.1(a)** is replaced as follows:

(a) within 200 days following the end of each fiscal year, a copy of the annual report containing audited consolidated financial statements for such fiscal year of such Party, or, with regard to J.P. Morgan, a copy of the annual report containing audited consolidated financial statements for such fiscal year of JPMorgan Chase & Co.

b. **Section 4.1(b)** is replaced as follows:

(b) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of the quarterly report containing unaudited consolidated financial statements for such fiscal quarter of such Party, or, with regard to JPMorgan Chase & Co., a copy of the quarterly report containing unaudited consolidated financial statements for such fiscal quarter of JPMorgan Chase & Co., and

c. **Section 4.2** is amended by adding the following subsection (h):

(h) To the extent either or both parties deliver Credit Support in the form of cash or securities, the Party experiencing the Downgrade Event hereby grants to the other Party (“**Secured Party**”) a present and continuing security interest in, and lien on (and right of setoff against), and assignment of, all such Credit Support and all proceeds resulting therefrom or the liquidation thereof, and each party agrees to take such action as the other Party reasonably requires in order to perfect the Secured Party’s first-priority security interest in, and lien on (and right of setoff against), such Credit Support and any and all proceeds resulting therefrom or from the liquidation thereof.

8.7 Changes to Article 5 of the Master Agreement – “Events of Default: Remedies”

a. **Section 5.3 “Net Out of Settlement Amounts”**, is amended by replacing the words “Performance Assurance” with “Credit Support”. **Section 5.3** also is amended by adding the following sentence at the end thereof: “To the extent that the Non-Defaulting Party applies the proceeds realized upon the exercise of

any such rights or remedies to reduce the Defaulting Party's obligations under this Agreement, the Non-Defaulting Party shall return any surplus proceeds remaining after such obligations are satisfied in full."

b. Section 5.4 "Calculation Disputes", is amended by replacing the words "Performance Assurance" with "Credit Support".

8.8 Marketing and Media Rights

If requested, Seller shall provide to Buyer marketing and media rights including the ability to obtain, document and publish project information and photos.

The parties agree to the Transaction set forth herein.

Seller: J.P. Morgan Ventures Energy Corporation	Buyer: The City of Seattle, City Light Department (dba "Seattle City Light")
By:	By:
Name:	Name: Jorge Carrasco
Title:	Title: Superintendent
Date:	Date:



**ATTACHMENT 1 TO CONFIRMATION AGREEMENT
ATTESTATION FROM GENERATOR PARTICIPATING IN WREGIS**

This Attachment 1 to the Confirmation governs generation at the Facility during the Term. Any changes shall be provided to the Buyer as soon as reasonably practicable by providing a revised Attachment 1.

1. Renewable Energy Facility Owner Information

- a. Name of Owner: _____
- b. Address of Owner: _____
- c. Contact person: _____ Title: _____
- d. Telephone: _____ Fax: _____ Email: _____

2. Renewable Energy Facility and WREGIS Registration Information

- a. Name of Facility: _____
- b. Location/Address of Facility: _____
- c. Facility ID Number: _____ ☐ EIA or ☐ QF? (check one)
- d. Fuel Type: wind
- e. Initial Operating Date: _____
- f. Nameplate Capacity (MW): MW

3. WREGIS Information

- a. Generating Unit Identification Number: _____
- b. Generating Unit Name: _____
- c. Primary Facility Name: _____

4. Other

- a. Is the Facility owner reporting its direct greenhouse gas emissions in a legally binding cap and trade program for the time period of generation listed on this form?



- ☐ Yes; list the cap and trade program: _____
☐ No

- b. If Seller is providing only RECs to Purchaser and selling the associated electricity to a utility or load-serving entity, please write the name of the utility or load-serving entity here:
- c. If Facility has been registered in a Tracking System by an entity other than Owner, complete items 1 – 3 immediately below and have an agent of the company or individual designated in WREGIS to manage Facility's account in WREGIS complete and sign this form. For the purposes of this form, such a company or individual is referred to as an "Account Manager".¹
- (i) Name of Account Manager as appears in WREGIS:
- (ii) Date that account management rights assigned to Account Manager expire:
- (iii) ☐ Account Manager has attached documentation accepted by WREGIS authorizing Account Manager to register Facility in Tracking System.

5. Declaration

I, (print name and title) _____
("Signatory"), authorized agent of ☐ Owner / ☐ Account Manager (check one)
declare that I have sufficient knowledge and authority to make the following attestation for the Effective Period of this document. I also declare the following regarding Facility's participation in WREGIS and regarding Renewable Attributes (also called "Certificates", "Renewable Energy Certificates" or "RECs") generating by Facility and tracked in Tracking System:

- a. all renewable and environmental attributes associated with the production of electricity from Facility, including any and all CO2 benefits, emissions offsets, reductions or claims, are transferred to purchasers within the WREGIS Tracking System;
- b. for Transactions made within WREGIS only fully aggregated Environmental Attributes are traded;
- _____

¹ Only fill in this section if Owner and Account manager have signed the appropriate bi-lateral form required by WREGIS to designate Account Manager as the sole manager of Facility's Tracking System account and sole recipient of Facility's Environmental Attributes. If there is no Account Manager, and Owner manages Facility's account, this section should be left blank, and Owner must complete this attestation.

- c. the Environmental Attributes of a particular MWh are sold, retired or reserved only once;
- d. to the best of my knowledge, the Environmental Attributes or the electricity that is generated with the Environmental Attributes are not used to meet any federal, state or local renewable energy requirement, renewable energy procurement, renewable portfolio standard, or other renewable energy mandate by any entity other than the party on whose behalf the Environmental Attributes are retired;
- e. the electricity that was generated with the attributes is not separately sold, separately marketed or otherwise separately represented as renewable energy attributable to Facility by Seller, or, to the best of my knowledge, any other entity other than Buyer.

6. Signature

As an authorized agent of Owner or Account Manager, Signatory declares that they have the knowledge and authority to attest that the statements on this form are true and correct. By signing this form, Signatory is attesting that the statements and declarations herein will remain true for the Effective Period.

If any conditions change related to the information on this form prior to Expiration Date, Signatory agrees to inform the Buyer in writing as far in advance of the change as commercially practicable.

Signature

Date

Title

Organization

Place of Execution



ATTACHMENT 2 TO CONFIRMATION AGREEMENT GUARANTEED MINIMUM CALCULATOR

Capacity (MW)	10
Minimum Capacity Factor	21.6%
Three Year Guaranteed (MWh)	56,765

Example:

Year	Actual CF	Actual	Actual Three Years	Additional	Total 3 years
1	20%	17,520	NA	NA	NA
2	20%	17,520	NA	NA	NA
3	21%	18,396	53,436	3,329	56,765
4	31%	27,156	64,999	0	64,999
5	31%	27,156	72,708	0	72,708

Change numbers in *italic font* to simulate the numbers

Actual CF=Actual capacity factor each year

Additional= the amount of shortage settled after the fact

Actual three years= actual three years generation plus additional RECS if it was provided

Total 3 years = has to be greater than or equal to the Three Year Guaranteed amount



FISCAL NOTE FOR NON-CAPITAL PROJECTS

Department:	Contact Person/Phone:	CBO Analyst/Phone:
City Light	Robert W. Cromwell, Jr./206-684-3856	Calvin Chow/206-684-4652

Legislation Title:

AN ORDINANCE relating to the City Light Department; authorizing the execution of a confirmation agreement with J.P. Morgan Ventures Energy Corporation for the purchase of environmental attributes from a 10 MW share of the Stateline Wind Project in the form of renewable energy certificates that are necessary or convenient for meeting the requirements of the Washington State Energy Independence Act; and further authorizing the execution of other necessary and convenient agreements for the receipt, tracking, transferring, management, and sale of the environmental attributes.

Summary of the Legislation:

This legislation approves the confirmation agreement for the 5-year purchase of renewable energy certificates (REC's) to allow the City Light Department to comply with the Washington State Energy Independence Act also known as Initiative 937 or I-937. The City Light Department would pay \$14 per REC from 2022 through 2026 for approximately 23,000 RECs per year.

Background:

This legislation approves the confirmation agreement for the purchase of renewable energy certificates from J.P. Morgan Ventures Energy Corporation's 10 MW share of the 300 MW Stateline Wind Project located in Walla Walla County, Washington and Umatilla County, Oregon. This resource is expected to produce about 23,000 RECs annually. City Light will receive 100 percent of the RECs associated with the 10 MW share of the renewable resource starting in 2022 for a 5-year term. The RECs will be delivered to City Light through the Western Renewable Energy Generation Information System. The RECs from this wind resource are eligible under Washington State's Energy Independence Act (Chapter 19.285 of the Revised Code of Washington). City Light intends to use the RECs to partially meet its regulatory requirement under the Energy Independence Act.

X This legislation has financial implications.

Appropriations:

Fund Name and Number	Department	Budget Control Level*	2011 Appropriation	2012 Anticipated Appropriation
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TOTAL			\$0	\$0

Appropriations Notes: None for 2011 and 2012.

Anticipated Revenue/Reimbursement Resulting from this Legislation:

Fund Name and Number	Department	Revenue Source	2011 Revenue	2012 Revenue
TOTAL			\$0	\$0

Revenue/Reimbursement Notes: None

Total Regular Positions Created, Modified, or Abrogated through this Legislation, Including FTE Impact:

Position Title and Department	Position # for Existing Positions	Fund Name & #	PT/FT	2011 Positions	2011 FTE	2012 Positions*	2012 FTE*
TOTAL				0	0	0	0

Position Notes: None.

Spending/Cash Flow:

Fund Name & #	Department	Budget Control Level*	2011 Expenditures	2012 Anticipated Expenditures
TOTAL			\$0	\$0

Spending/Cash Flow Notes: None.

Other Implications:

- a) **Does the legislation have indirect financial implications, or long-term implications?**
Yes. Starting in 2022, the expected annual cost for the 5-year term is \$320,000 per year.
- b) **What is the financial cost of not implementing the legislation?** The financial cost of not implementing this legislation would be to purchase other RECs, or resources that are more expensive, or pay the costs related to the penalty in I-937 for not having sufficient RECs. The penalty cost is approximately four times greater than the acquisition cost of the RECs proposed in this legislation.



- c) **Does this legislation affect any departments besides the originating department?**
No.
- d) **What are the possible alternatives to the legislation that could achieve the same or similar objectives?** Alternatives include purchasing RECs from other renewable resources and/or energy plus RECs from new renewable resources. City Light is acquiring and will continue to acquire both to meet its regulatory obligation and its retail customer load requirements. Renewable resources that include energy, RECs, and delivery cost approximately six times more than this REC purchase.
- e) **Is a public hearing required for this legislation?** No. There have not been previous hearings. There will be an opportunity for public comment at the council meeting prior to council's vote to approve or reject the legislation.
- f) **Is publication of notice with *The Daily Journal of Commerce* and/or *The Seattle Times* required for this legislation?** Not applicable.
- g) **Does this legislation affect a piece of property?** No.
- h) **Other Issues:** None.

List attachments to the fiscal note below: None.



City of Seattle
Office of the Mayor

November 8, 2011

Honorable Richard Conlin
President
Seattle City Council
City Hall, 2nd Floor

Dear Council President Conlin:

I am pleased to transmit the attached proposed Council Bill that authorizes the City Light Department to execute an agreement with J. P. Morgan Ventures Energy Corporation for the purchase of environmental attributes in the form of renewable energy certificates from their share of the Stateline Wind Project. City Light is required to purchase renewable resources and/or environmental attributes under Chapter 19.285.030 (18) of the Revised Code of Washington. This agreement will facilitate meeting this requirement.

By acquiring the "renewable energy certificates" from the Stateline Wind Project, we are not only taking a step to assure City Light's compliance with "I-937" for a number of years in the future, we are helping to support and promote the development of new, renewable electric generating resources in the Pacific Northwest. This agreement is fully consistent with our shared goal of promoting a sustainable community, doing so in a very cost-effective manner.

Thank you for your consideration of this legislation. Should you have questions, please contact Robert W. Cromwell, Jr. at 684-3856.

Sincerely,

Michael McGinn
Mayor of Seattle

cc: Honorable Members of the Seattle City Council



